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A GUIDE IN REVIEWING STUDENT HANDBOOKS

Developed by:
The Massachusetts Department of Education
Bureau of Student Development and Health
and
Office of the General Counsel

NN.

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April 1990

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March 19, 1990

REVIEWING STUDENT HANDBOOKS

As of March 15, 1990, Massachusetts General Laws Chapter 71, Section 37H, as amended by Chapter 603 of the Acts of 1989, requires annual review of public high school codes of student conduct by a handbook review committee. In order to provide assistance to committees selected to review local school handbooks, the following are the Department's responses to some of the most frequently asked questions regarding handbook requirements and acceptable rules.

1. Q. How does this recent amendment change the current handbook law?
 - A. The amendment requires that in each school building containing grades 9-12 inclusive, the rules pertaining to the conduct of students will be reviewed annually by a handbook review committee.
2. Q. Who should serve on this committee?
 - A. The committee, to be formed on an annual basis, must be chaired by the principal and must include three teachers, three parents, three students, and one person appointed by the school committee. If the school has more than 2500 students, additional members are appointed to the handbook review committee. The statute, a copy of which is attached, describes the method of selection and the requirements for additional members. Other appropriate staff may be added to the committee. The Department recommends that the director of special education and the Title IX/622 coordinator be considered as members of the committee.
3. Q. May the school use an existing council or committee as the handbook review committee?
 - A. Yes. The Department recommends that schools use the existing School Improvement Council for this purpose. Membership may be adjusted as necessary to meet the requirements of G.L. c.71, s.37H. However, the decision whether to use an existing committee or select a new one for the purpose of handbook review is left to local discretion.
4. Q. If an existing committee will serve as the handbook review committee, must the school conduct elections for the additional members?
 - A. Yes. The additional members of the handbook review committee must be elected on an annual basis following the requirements specified by G.L. c.71, s.37H.

5. Q. How often does the handbook review committee meet?
 - A. The committee conducts an annual review each spring for the handbook to be used starting in September of that year. In addition, the committee may be convened at other times during the school year to consider any policy changes. Like the School Improvement Council, the handbook review committee should conduct open meetings, with prior public notice of each meeting.
6. Q. What does the committee do with the results of the review?
 - A. The results, including recommendations for revision, are to be submitted to the school committee for its actions. The school committee may accept, reject, modify, or take any other action on the proposed recommendations.
7. Q. Do only high schools have to file handbooks?
 - A. No. Chapter 71, Section 37H requires all school committees (and educational collaboratives) to file with the Department of Education all of the rules and regulations which pertain to the conduct of students and teachers in each public school. Many school districts have not realized the importance of filing elementary school rules and regulations in the past.
8. Q. Must a handbook review committee be appointed in elementary, middle or junior high schools?
 - A. No. The law requires a handbook review committee only in a school that contains the grades 9-12, inclusive. Consequently, it applies to a school in which the grade configuration is, for example, 9-12, 10-12, 8-12, or 7-12. The review of student codes of conduct by a broad-based representative group in elementary, middle and junior high schools can be a very useful activity and is encouraged, but it is not required by law.
9. Q. If a handbook has been filed with the Department and is therefore enforceable, does that mean all sections of it are legal?
 - A. No. The statute states that rules and regulations shall not be effective until filed with the Commissioner of Education, accompanied by a certification letter from the school committee. The Central Office of the Department of Education is responsible for receiving this information. The Department acknowledges receipt of rules and regulations. However, this acknowledgement should not be construed as an endorsement of the content of a handbook nor as a statement that it complies with existing state and federal laws.
10. Q. What must be included in a student handbook?
 - A. Chapter 71, Section 37H requires that codes of conduct must include, at the minimum, descriptions of existing alternative education programs; due process guidelines; the actions that will

lead to suspension or expulsion and procedures for suspension and expulsion of students; procedures pertaining to the disciplining of students with special needs; standards and procedures to assure school building security and safety of students and school personnel, including the law which makes possession of a firearm on school property a crime; policies for disciplining students involved in hazing activities in school or at school functions; and the disciplinary measures to be taken in cases involving the possession or use of illegal substances, weapons, the use of force, vandalism, or violation of other students' civil rights. Codes of conduct must be updated to contain these provisions.

11. Q. Chapter 71, Section 37H requires schools to include "existing alternative education programs" in the code of conduct. Does this mean that the school should create alternative education programs?
- A. No. The statute does not require school officials to create alternative programs. If alternative education programs are available to students, these must be listed in the code of conduct.
12. Q. What due process guidelines does the Department of Education suggest that schools adopt?
- A. In Goss v. Lopez (419 U.S. 565 (1975)), the United States Supreme Court held that before a student is temporarily suspended from public school for ten days or less, the student has the constitutional right to receive:
- (1) oral or written notice of the charges against him/her;
 - (2) an explanation of the evidence against him/her; and
 - (3) the opportunity to present his/her side of the story to an impartial decision-maker (who may be a school administrator).

Notice of the suspension and the hearing must occur before the student may be asked to leave school, except when a student presents an immediate threat to school officials, other students, or him/herself, or clearly endangers the school environment. In this case, the hearing may be delayed, but must be held within a reasonable period of time.

The Goss decision did not establish rules for suspensions longer than ten days, but indicated that more formal procedures could be required in those cases. If the circumstances warrant, more formal procedures may be provided even for a short-term suspension. Such circumstances may include particularly serious charges or significant factual disputes.

Students should be told the length of the suspension when it is initiated. In addition, they should be notified, directly or through the school discipline code, of the procedure for appealing the suspension decision (e.g., through the principal, the superintendent and the school committee).

13. Q. How do the standards and procedures for expulsion of students differ from those for short-term suspensions?
- A. Expulsion, or permanent exclusion of a student from public school, requires more formal procedures than short-term suspensions. Massachusetts General Laws C. 76, S. 17 requires a school committee to provide a fair hearing for a student and his/her parents before the student is permanently excluded for alleged misconduct. The procedural rights for students facing expulsion include:
- (1) written notice of the charges;
 - (2) the right to be represented by a lawyer or advocate (at the student's expense);
 - (3) adequate time to prepare for the hearing;
 - (4) access to documented evidence before the hearing;
 - (5) the right to question witnesses; and
 - (6) a reasonably prompt, written decision including specific grounds for the decision.

In addition, the student or his/her parent may request that the meeting be tape recorded and that the proceedings be interpreted into the student's/parent's primary language. The open meeting law applicable to school committees, General Laws C. 39, S. 23B, allows the school committee to go into executive session to consider the discipline of an individual. As a general rule we advise school committees to hold student expulsion hearings in executive session, following the procedures set forth in the statute. Note, however, that the statute allows the individual involved (that is, the student or his/her parent) to request that the hearing be held in open session.

Careful adherence to these procedures is particularly important since General Laws C. 76 S. 16 gives an unlawfully excluded student the right to bring a tort claim for damages against the town or regional school district.

These procedural "fair hearing" rights may also apply to long-term (more than ten days) suspensions, in light of the comment in the Goss case that a long-term suspension requires more than rudimentary due process. However, in practice, few schools suspend students for longer than ten days.

With respect to both suspensions and expulsions, it is important for the school's code of conduct to provide students with fair and adequate notice of the specific conduct that is prohibited, and the specific actions the school may take in response to student misconduct.

14. Q. What are examples of standards and procedures to assure school building security and safety of students and school personnel?
- A. Examples of rules and responsibilities for school safety are any policies which regulate visitors to the school or school grounds, use of vehicles on school grounds, other transportation rules, and notice of the recently enacted legislation that establishes penalties for possession of a weapon on school property.
15. Q. What is meant by the disciplinary measures to be taken in cases involving the possession or use of illegal substances or weapons, the use of force, vandalism or violation of other students' civil rights?
- A. The code of conduct should contain both the rules and the penalties for each of the areas listed in the statute, at the minimum. If the school committee creates other rules, these rules must be accompanied by the potential penalties.

The term "other students' civil rights" refers to the right of students to be free from discrimination including verbal or physical attacks based on race, national origin, religion, sex or disability. The code of conduct should contain rules that define the school's expectations for student behavior with respect to the civil rights of other students, as well as penalties for violation of the rules.

Specific provisions that should be included in the code of conduct:

- (1) Discrimination - Codes of conduct should assure students that the school does not discriminate based on a student's race, color, sex, religion, national origin or disability. Students should be informed that they have equal access to admission to school, courses, extracurricular activities, and employment opportunities, and will not be excluded for reasons of marriage or pregnancy. Students should be aware of the school's grievance procedure in the event that students believe they are victims of discrimination. Also, students should be notified of the name of the Title IX/Chapter 622 coordinator who is available to respond to requests for information about these laws.

- (2) **Disciplining of students with special needs** - The code of conduct must contain disciplinary procedures that will be followed for students with special needs, including the process used if a student with special needs is to be suspended for more than ten days during a school year. (Copies of the Department's memorandum on discipline of students with special needs are available from the Special Education Specialists at the Department's Regional Education Centers.)
- (3) **Anti-hazing law** - School administrators may comply with their obligation to distribute copies of the anti-hazing law (General Laws C. 269, SS. 17-19) to members of organizations, by including the law and an acknowledgement form in the code of conduct. School rules and penalties for students who are found to have engaged in hazing, must be included in the code of conduct.
- (4) **Illegal Substances** - Codes of conduct should specify the disciplinary responses to possession or sale of illegal substances, including any progressive disciplinary steps that may exist. In addition, the code should specify how referrals and other interventions for counseling and/or treatment are coordinated, as well as reentry policies after an extended absence due to discipline and/or treatment.
- (5) **Dangerous Weapons** - Codes of conduct should provide notice to students that the possession of a firearm or other dangerous weapon in any building or on the grounds of any elementary or secondary school is a crime punishable by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both.
- (6) **Prohibition of Tobacco** - School committees must develop policies that deal with students who violate the law prohibiting the use of tobacco on public school grounds during school hours. (See G.L. C. 71, S. 2A, attached.)
- (7) **Corporal Punishment** - Corporal punishment in public schools is illegal in Massachusetts. School staff may not hit, spank or physically punish students. School staff members may, however, use reasonable force if necessary to protect students, other persons or themselves from an assault by a student.
- (8) **Student Searches** - If the school committee has a policy on searches of students and their property, it should be included in the code of conduct. (A copy of the Department's advisory on student searches is attached.)

- (9) **Dress Codes** - If the school has a dress code, it should be included in the student handbook. School codes regulating appearance, like other rules affecting property or liberty interests, must meet constitutional standards. Dress codes should be as specific as possible, and should be limited to what is necessary to protect the health, safety and welfare of the school community and preserve an environment conducive to the educational process.
- (10) **Other Rules** - Rules and regulations which may lead to the denial of school transportation, or participation in extra-curricular activities including interscholastic athletics, must be contained in the code of conduct.

General Considerations

1. An effective code of conduct will contain only rules and regulations that reflect the school community's educational philosophy. The purposes of a discipline code are (a) to define expected behavior by telling students what rules exist; (b) to encourage students to meet those expectations by following the rules; and (c) to describe the disciplinary steps that will be taken if a student breaks the rules. The code should be clear and age-appropriate for the students in the school.
2. An effective code of conduct will help maintain a positive school environment and will encourage students to keep learning and to stay in school. Strictly punitive measures that do not address educational and counseling issues do not contribute to these goals.
3. Allowing students to make up school work missed during suspension and receive credit for work completed will support efforts to prevent student failure and/or dropping out prior to graduation. Students who are not encouraged to complete missed school work may fall further behind their peers academically, and continued academic difficulties may contribute to students becoming at risk of school failure.
4. The code of conduct should contain school policies on the rights of parents and other adults, including students who are eighteen years of age or older.
5. Actions that could lead to suspension must be stated in terms that are specific and can be interpreted similarly by different people. Avoid vague penalties, such as a statement that a certain behavior will lead to "suspension" with no indication of the length of suspension. It is not necessary, or even desirable, to specify a particular punishment for every possible type of offense. However, the guidelines to be followed in setting penalties (the amount of disruption caused, the number of previous offenses, etc.) or the maximum penalty for each type of offense should be stated.
6. Penalties for violations of school rules should discipline the student directly and not create a situation in which the student is punished or rewarded for the inactions or actions of his/her parents or peers.

7. An effective code of conduct will explain the attendance policy, including any distinction between excused and unexcused absences and whether students may complete and obtain credit for work missed during an absence. The Department of Education believes that the use of academic punishment (lowering of academic grades for absences) is educationally unsound, because it is likely to contribute to students dropping out of school. However, if school committees choose to implement an academic punishment policy, we recommend that the policy be clearly stated, focus on the reduction of course credit rather than academic grade, provide an appeals process which is consistently administered, and as required by federal law, provide reasonable accommodation for students who are absent because of a disability (for example, a temporary illness or a chronic health problem).
8. Resources, names and locations for assistance within the school (guidance, health, student leaders) and a referral list of outside agencies, are appropriate for inclusion in student handbooks.
9. An effective code of conduct is a teaching tool for students to understand the rights and responsibilities of citizens in our democratic society. Constitutional rights, such as freedom of speech, press, assembly and religion; the rights to petition for redress of grievances; and the right to due process and equal protection under the law, are all reflected in an effective code of conduct. Codes of conduct that reflect the responsibility of members of the society to adhere to just rules serve to teach students about informed citizenship.

Further Assistance

The Student Services Specialist in the appropriate Regional Education Center is available to provide further assistance in reviewing your school district's code of conduct. The specialist is able to offer sample wording for rules, to analyze the code for potential violations of state or federal law, and to provide assistance in creating a handbook review committee for individual schools.

Please contact your Regional Education Center for assistance.

hlb

Enc. M.G.L. C. 71, S. 37H (as amended by Chapter 285 of the Acts of 1987 and Chapter 603 of the Acts of 1989); M.G.L. C. 71, S. 2A; M.G.L. Chapter 269, SS 17-19; M.G.L. Chapter 269, S. 10(j) and the Advisories on Student Searches and School Attendance Policies

APPENDIX

1. *M.G.L. Chapter 71, Section 37H*
2. *M.G.L. Chapter 71, Section 2A*
3. *M.G.L. Chapter 269, Section 10 (j)*
4. *M.G.L. Chapter 269, Sections 17 - 19*
5. *Advisory on Student Searches*
6. *Advisory on School Attendance Policies*

M.G.L. Chapter 71, Section 37H

PUBLICATION OF SCHOOL COMMITTEE RULES AND REGULATIONS RELATIVE TO THE CONDUCT OF TEACHERS AND STUDENTS

The school committee of every city, town or district shall publish its rules or regulations pertaining to the conduct of teachers or students which have been adopted. Copies of the rules or regulations shall be provided to any person upon request and without cost by the principal or headmaster of every school within each city, town or district. Such rules or regulations shall not become effective until filed with the commissioner of education accompanied by a certification by the committee that copies of the rules or regulations are available as previously set forth.

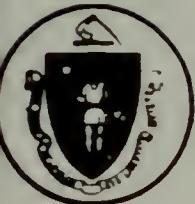
Each school committee's rules or regulations pertaining to the conduct of students shall include the following: existing alternative education programs; procedures assuring due process for students in disciplinary proceedings; standards and procedures for suspension and expulsion of students; procedures pertaining to discipline of students with special needs; standards and procedures to assure school building security and safety of students and school personnel; and the disciplinary measures to be taken in cases involving the possession or use of illegal substances or weapons, the use of force, vandalism, or violation of other students' civil rights. Codes of discipline, as well as procedures used to develop such codes, shall be filed with the department of education for informational purposes only.

In each school building containing the grades nine to twelve, inclusive, the rules pertaining to the conduct of students shall be reviewed annually by a handbook review committee consisting of the school principal who shall serve as chair; and for the first two thousand five hundred students or part thereof, three teachers, elected annually by the teachers of the building, three parents of children attending said school building chosen in elections held annually by the local parent-teacher organization under the direction of the principal of such school or, if none exists chosen by the school committee; one person appointed by the school committee; and three secondary students attending said school building elected annually by the students of said grades. For schools with more than two thousand five hundred students said committee shall consist of the above-mentioned members and one teacher, one parent, and one secondary student representative for each additional five hundred students selected in the manner above to serve on the committee. The handbook review committee may be an already existing committee within the school building that meets the representation requirements.

The handbook review committee shall conduct its annual review each spring for the handbook that will be in use starting in September of the following school year. Said committee may also be convened at other times during the course of

the school year in order to consider any handbook policy changes. The annual handbook review shall cover all areas of student conduct, including but not limited to those outlined in this section. The handbook review committee shall submit the results of its review, including any recommended additions or revisions to the code of student conduct, to the school committee for action.

(Added by St.1972, c.467; amended by St.1973, c.430, s.5; St.1987, c.285; St.1989, c.603)



The Commonwealth of Massachusetts Department of Education

1385 Hancock Street, Quincy, Massachusetts 02169-5183

M E M O R A N D U M

August 29, 1988

TO: School Committee Chairpersons
Superintendents of Schools

FROM: Harold Reynolds, Jr.
~~Commissioner~~ of Education

RE: Smoking on School Property
by Any Person

A new law, now in effect, prohibits smoking by any person in any school, group child care center, school-aged day care center or family day care center, except in those areas specifically designated as smoking areas or in a completely enclosed private office within any of these buildings. It also prohibits smoking at "any open meeting of a governmental body." For your reference, a copy of Chapter 759 of the Acts of 1987 is attached. Chapter 759 is codified in General Laws, Chapter 270, Section 22.

This law requires that the person in charge of these buildings must post notices that identify all smoking areas, as well as additional notices indicating that smoking is otherwise prohibited. Additionally, the law specifies that, upon receipt of a complaint that a smoking violation has occurred, the head of the occupying agency (the superintendent of schools) must respond to the complainant, within 15 days and in writing, and must then send a copy of both the complaint and the response to the Department of Public Health.

To insure compliance with this law, we recommend that all school districts:

1. Establish a policy regarding smoking in each school building within the district. Such policy should indicate which areas, if any, of each building have been designated as smoking areas, procedures for challenging or amending the policy and procedures for filing complaints when the policy is not followed (see the next to last paragraph of Section 22). Superintendents may wish to consult with the local fire department as well as local collective bargaining units while preparing this policy.

School Committee Chairpersons
School Superintendents
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August 29, 1988

In addressing issues of non-compliance with the policy, we urge school personnel to refrain from punitive measures and instead to adopt an approach that considers the underlying problem of addiction and encourages smokers to avail themselves of resources in the area which help people to stop smoking. The American Cancer Society (267-2650), the American Heart Association (449-5931), and the American Lung Association of Massachusetts (269-9720), all have regional offices. School personnel may also wish to contact the Office for Non-Smoking and Health (727-0732) at the Department of Public Health for further information.

2. Disseminate the new policy on smoking by publishing it in the Teacher/Student Handbook.
3. Post signs identifying the designated smoking area(s), if any.
4. Post signs at each building entrance and elsewhere in the building indicating that smoking is prohibited (except in the designated smoking area, if any).
5. Inform administrative staff as to the required response upon receiving any complaint.

In addition to the requirements set forth by the legislation, school officials should anticipate additional regulations being issued on this matter by the Department of Public Health, which is charged by Section 4 of Chapter 759 with the task of promulgating new rules to effect the implementation of this law.

cc: Regional Education Center Directors
George Perry

Chapter 641.

THE COMMONWEALTH OF MASSACHUSETTS.

In the Year One Thousand Nine Hundred and Eighty-seven

AN ACT PROHIBITING THE USE OF TOBACCO IN THE PUBLIC SCHOOLS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 71 of the General Laws is hereby amended by inserting after section 2 the following section:-

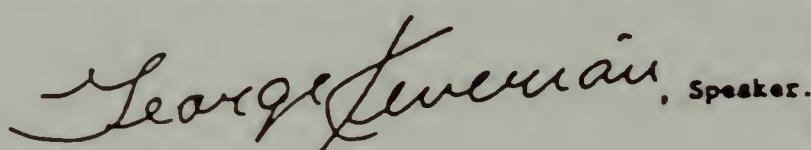
Section 2A. It shall be unlawful for any student, enrolled in either primary or secondary public schools in the commonwealth, to use tobacco products of any type on school grounds during normal school hours.

Each school committee shall establish a policy dealing with students who violate this law. This policy may include, but not be limited to, mandatory education classes on the hazards of tobacco use.

SECTION 2. This act shall take effect September first, nineteen hundred and eighty-nine.

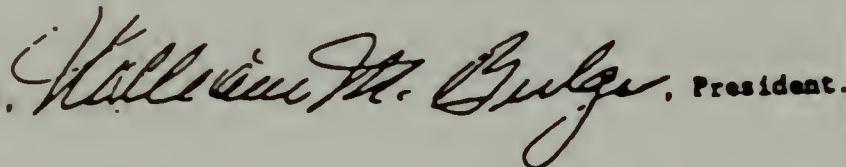
House of Representatives, December 14, 1987.

Passed to be enacted.



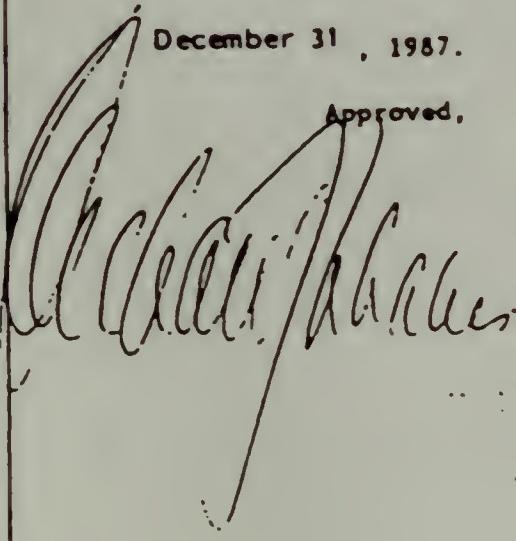
In Senate, December 14, 1987.

Passed to be enacted.



December 31, 1987.

Approved,

 Governor.

THE COMMONWEALTH OF MASSACHUSETTS

In the Year One Thousand Nine Hundred and Eighty-nine

AN ACT RELATIVE TO WEAPONS CARRIED ON SCHOOL GROUNDS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section 10 of chapter 269 of the General Laws, as appearing in the 1988 Official Edition, is hereby amended by striking out paragraph (j) and inserting in place thereof the following paragraph:-

(j) Whoever, not being a law enforcement officer, and notwithstanding any license obtained by him under the provisions of chapter one hundred and forty, carries on his person a firearm as hereinafter defined, loaded or unloaded or other dangerous weapon in any building or on the grounds of any elementary or secondary school, college or university without the written authorization of the board or officer in charge of such elementary or secondary school, college or university shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both. For the purpose of this paragraph, "firearm" shall mean any pistol, revolver, rifle or smoothbore arm from which a shot, bullet or pellet can be discharged by whatever means.

Any officer in charge of an elementary or secondary school, college or university or any faculty member or administrative officer of an elementary or secondary school, college or university failing to report violations of this paragraph shall be guilty of a misdemeanor and punished by a fine of not more than five hundred dollars.

House of Representatives, December 19, 1989.

Passed to be enacted.

George Lenerian, Speaker.

In Senate, December 20, 1989.

Passed to be enacted.

Hilary M. Bullock, President.

HAZING — PENALTIES

Chapter 665

AN ACT increasing the penalties of hazing.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Chapter 269 of the General Laws is hereby amended by striking out sections 17 to 19, inclusive, and inserting in place thereof the following three sections: —

Section 17.

Whoever is a principal organizer or participant in the crime of hazing, as defined herein, shall be punished by a fine of not more than three thousand dollars or by imprisonment in a house of correction for not more than one year, or both such fine and imprisonment.

The term "hazing" as used in this section and in sections eighteen and nineteen, shall mean any conduct or method of initiation into any student organization, whether on public or private property, which wilfully or recklessly endangers the physical or mental health of any student or other person. Such conduct shall include whipping, beating, branding, forced calisthenics, exposure to the weather, forced consumption of any food, liquor, beverage, drug or other substance, or any other brutal treatment or forced physical activity which is likely to adversely affect the physical health or safety of any such student or other person, or which subjects such student or other person to extreme mental stress, including extended deprivation of sleep or rest or extended isolation.

Notwithstanding any other provisions of this section to the contrary, consent shall not be available as a defense to any prosecution under this action.

Section 18.

Whoever knows that another person is the victim of hazing as defined in section seventeen and is at the scene of such crime shall, to the extent that such person can do so without danger or peril to himself or others, report such crime to an appropriate law enforcement official as soon as reasonably practicable. Whoever fails to report such a crime shall be punished by a fine of not more than one thousand dollars.

Section 19.

Each institution of secondary education and each public and private institution of post secondary education shall issue to every student group, student team or student organization

which is part of such institution or is recognized by the institution or permitted by the institution to use its name or facilities or is known by the institution to exist as an unaffiliated student group, student team or student organization, a copy of this section and sections seventeen and eighteen; provided, however, that an institution's compliance with this section's requirements that an institution issue copies of this section and sections seventeen and eighteen to unaffiliated student groups, teams or organizations shall not constitute evidence of the institution's recognition or endorsement of said unaffiliated student groups, teams or organizations.

Each such group, team or organization shall distribute a copy of this section and sections seventeen and eighteen to each of its members, plebes, pledges or applicants for membership. It shall be the duty of each such group, team or organization, acting through its designated officer, to deliver annually, to the institution an attested acknowledgement stating that such group, team or organization has received a copy of this section and said sections seventeen and eighteen, that each of its members, plebes, pledges, or applicants has received a copy of sections seventeen and eighteen, and that such group, team or organization understands and agrees to comply with the provisions of this section and sections seventeen and eighteen.

Each institution of secondary education and each public or private institution of post secondary education shall, at least annually, before or at the start of enrollment, deliver to each person who enrolls as a full time student in such institution a copy of this section and sections seventeen and eighteen.

Each institution of secondary education and each public or private institution of post secondary education shall file, at least annually, a report with the regents of higher education and in the case of secondary institutions, the board of education, certifying that such institution has complied with its responsibility to inform student groups, teams or organizations and to notify each full time student enrolled by it of the provisions of this section and sections seventeen and eighteen and also certifying that said institution has adopted a disciplinary policy with regard to the organizers and participants of hazing, and that such policy has been set forth with appropriate emphasis in the student handbook or similar means of communicating the institution's policies to its students. The board of regents and, in the case of secondary institutions, the board of education shall promulgate regulations governing the content and frequency of such reports, and shall forthwith report to the attorney general any such institution which fails to make such report.



The Commonwealth of Massachusetts Department of Education

1385 Hancock Street, Quincy, Massachusetts 02169

MEMORANDUM

February 25, 1985

TO: School Committee Chairpersons
Superintendents of Schools

FROM: Rhoda E. Schneider *RS*
General Counsel

RE: Student Searches in Public Schools
(New Jersey v. T.L.O.)

Introduction

On January 15, 1985, the United States Supreme Court decided the case of New Jersey v. T.L.O., 53 U.S.L.W. 4083 (1985). The decision establishes constitutional standards relating to searches of students conducted by public school officials and employees. This advisory opinion, prepared with the assistance of staff from the offices of the Attorney General, the Governor's legal counsel, and the Middlesex County District Attorney, is intended to inform public school officials and other interested parties of the standards set forth in the decision. We encourage school officials to distribute copies of this advisory opinion to school building administrators and other appropriate staff, and to use it in staff training sessions.

Legal Standards Established by the Supreme Court

In T.L.O., the Supreme Court held that the Fourth Amendment to the United States Constitution (which prohibits unreasonable searches and seizures) applies to searches of students conducted by public school officials. In so ruling, the Court rejected the argument that school officials are, like parents, immune from the requirements of the Fourth Amendment. Rather, the Court declared, public school officials act as representatives of the state, and thus are bound by constitutional safeguards.

Next, the Court addressed the question of what constitutes a "reasonable" search by public school officials. Focusing on the context of the public school, the Court applied a balancing test between the students' interest in personal privacy and the school's interest in maintaining discipline in the

classroom and on school grounds. The application of this balancing test led the Court to conclude that school officials need not obtain a warrant or meet the strict legal standard of "probable cause" (applicable to police and law enforcement officials), before searching a student who is under their authority. Rather, the Court stated:

[T]he legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search . . . Under ordinary circumstances, a search of a student by a teacher or other school official will be 'justified at its inception' when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. Such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.

New Jersey v. T.L.O. 53 U.S.L.W. 4083, 4087-4088.

The Court noted that this standard of "reasonableness" should permit school administrators and teachers "to regulate their conduct according to the dictates of reason and common sense," while at the same time ensuring that "the interests of students will be invaded no more than is necessary to achieve the legitimate end of preserving order in the schools." Id., at 4088.

The Court specifically declined to adopt a standard under which the legality of a search would depend on an evaluation of the relative importance of the school rule in question, noting that "the promulgation of a rule forbidding specified conduct presumably reflects a judgment on the part of school officials that such conduct is destructive of school order or of a proper educational environment." The decision urges courts to defer to school officials' determination of appropriate rules of student conduct, at least "absent any suggestion that the rule violates some substantive constitutional guarantee." Id. at 4088, n.9.

Application of "Reasonableness" Standard to Specific Facts

In T.L.O. the Supreme Court upheld the legality of an assistant vice principal's search of a student's purse, after a teacher had reported that the student was observed smoking in the school lavatory in violation of school rules. According to the Court, this report (which the student denied) gave the school administrator "reasonable suspicion" justifying his decision to open the student's purse to look for cigarettes, even though the cigarettes, if found, would not constitute conclusive evidence that the student had been smoking. When the administrator removed a pack of cigarettes from the purse,

he noticed also a pack of cigarette rolling papers. Since rolling papers are associated with the use of marijuana, the Court concluded that the administrator had a "reasonable suspicion" that the purse also contained marijuana, so that he was justified in searching the contents of the purse further. The administrator found in the purse marijuana, plastic bags, and other evidence of drug-related activities. This evidence was turned over to the police, and the state subsequently brought juvenile delinquency charges against the student. The New Jersey Supreme Court ruled that the search of the purse was unreasonable under the Fourth Amendment to the U.S. Constitution, and therefore excluded the evidence from admissibility in the delinquency proceedings. However, the U.S. Supreme Court reversed the state court judgment, concluding that under its newly-articulated constitutional standard for student searches, the search in question was indeed reasonable.

The assessment of the "reasonableness" of a particular student search is inevitably a judgment question, without definitive benchmarks other than the general standard of "reasonableness" set forth in the T.L.O. decision and quoted on page 2, above. The determination of reasonableness will always be a matter of judgment dependent on the circumstances of the search, the grounds that gave rise to it, and the measures used in the search, considering the age and sex of the student and the nature of the alleged infraction. The exercise of common sense and good judgment should assist school officials and teachers in conforming their conduct to the "reasonableness" standard.

What Issues Are NOT Decided by the T.L.O. Case?

While the T.L.O. decision makes it clear that the Fourth Amendment's prohibition against unreasonable searches and seizures applies to student searches by public school officials and employees, and establishes a standard for judging the reasonableness of a search in these circumstances, the decision leaves several related questions unresolved:

(1) "Will the Supreme Court's standard of 'reasonableness' for student searches be followed by the Massachusetts Supreme Judicial Court when faced with a similar case?" The Supreme Court noted that a state court may establish a more demanding standard under its own state constitution or statutes. Id., at 4088, n.10. Accordingly, a state court could rule that under the "search and seizure" provision of the state constitution, public school officials must adhere to the stricter "probable cause" standard applicable to searches conducted by law enforcement officials. We are not aware of any student search case currently pending in the Massachusetts appellate courts. Unless and until the Massachusetts courts rule otherwise as a matter of state law, the Fourth Amendment standard established by the Supreme Court in T.L.O. will govern this issue in Massachusetts public schools.

(2) "What standards apply to public school officials' search of student lockers or desks?" The Court specifically stated that it was not addressing this issue in T.L.O.. Id., at 4086, n.5. However, it acknowledged that courts in other jurisdictions have split on this issue. Some courts have

upheld a locker search, on grounds that the school has joint control of the locker with the students. See, for example, Zamora v. Pomeroy, 639 F. 2d 662 (10th Cir. 1981), and People v. Overton, 24 N.Y. 2d 522, 249 N.E. 2nd 366 (1969). On the other hand, at least one court has struck down a locker search, holding that where the school did not have a policy of regularly inspecting student lockers, students had an "expectation of privacy" in their lockers. See State v. Engerud, 94 N.J. 331, 463 A. 2d 934 (1983). Please see page 5 of this advisory opinion for suggested guidelines on locker searches.

(3) "What standards apply to student searches conducted by school officials in conjunction with, or acting at the behest of, a law enforcement agency?" The Court specifically stated that T.L.O. presented only the issue of searches conducted by school officials acting alone and on their own authority. Id., at 4087, n.7. However, the Court noted a U.S. District Court decision holding that the higher standard of "probable cause" applies to student searches that involve the police. Picha v. Wilgos, 410 F.Supp. 1214 (N.D. Ill. 1976).

(4) "Is 'individualized suspicion' an essential element of the 'reasonableness' standard?" The search at issue in T.L.O. was based on an individualized suspicion that a particular student had violated school rules. The Court declined to go beyond that situation and decide whether suspicion focused on a particular student is essential to uphold any search in a public school. Id., at 4088, n.8. However, the Court noted that in other contexts, it has held that individualized suspicion is usually a prerequisite to a constitutional search and seizure. In general, a search not based on individualized suspicion (e.g., a random search) will be upheld only if the privacy interests implicated by the search are minimal, and "other safeguards are available to assure that the individual's reasonable expectation of privacy is not subject to the discretion of the official in the field." Id., citing Delaware v. Prouse, 440 U.S. 648 (1979).

Guidelines for Public Schools

Based on our analysis of the T.L.O. decision as well as lower court cases involving related issues T.L.O. did not address, we offer the following guidelines for student searches in public schools:

(1) Under the Fourth Amendment to the U.S. Constitution, students are protected from unreasonable searches and seizures conducted by public school officials and teachers. A search that a court finds to have been unreasonable may invalidate any disciplinary action the school has taken based on the evidence seized, and may also give rise to an action for monetary damages against the school district and its employees who conducted or directed the search. For these reasons, school officials should be cautious and prudent in establishing local guidelines for, and conducting, student searches.

(2) A student search by a public school official or teacher will be found reasonable, under the U.S. Supreme Court standard, if (a) there are reasonable grounds for suspecting that the student has violated or is

violating either the law or the rules of the school, and (b) the search itself is conducted in a manner reasonably related to its objectives and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.

(3) "Reasonable grounds" for a student search may include, for example, a school official's personal observation that the student possesses contraband material on school premises, or the official's receipt of a report to that effect by a teacher, another school employee, a student, or some other reliable source. Even a report from an anonymous source may constitute reasonable grounds for a search, if all the circumstances persuade the school official that the report is reliable (for example, there is independent information corroborating it). In general, the more serious the threat to public safety posed by the contraband material allegedly possessed by the student (e.g., a weapon), the more likely it is that a court would find reasonable grounds for school officials to act swiftly to conduct a search.

(4) The manner and method of the search must be tailored to the circumstances (What is being sought? What is the alleged violation? How old, and what sex, is the student?). The search should be limited to areas and objects that reasonably could be expected to contain the contraband material being sought. A reading of pertinent court decisions suggests that school officials should avoid conducting highly intrusive searches (e.g., strip searches), random searches of students, or searches that involve a wholesale rummaging through a student's personal property.

(5) The issue of searches of student lockers and desks has yet to be decided definitively by the courts. However, a reading of the pertinent cases suggests that each school committee should adopt and publish, as part of its student conduct code (see item (7), below), a policy on student lockers and desks. For example, the policy may state that (a) master keys or copies of combinations for lockers are retained by the school, (b) certain items may not be stored in lockers or desks (including, for example, weapons, illegal drugs, alcoholic beverages, stolen property, and so on), and (c) the school retains the right to inspect lockers and desks periodically for compliance with these rules. The cases that have upheld locker searches generally have done so based on school rules that advised all students of the school's intention to conduct periodic locker inspections. Of course, school districts may, if they choose, adopt policies that recognize greater student rights of privacy in lockers and desks.

(6) A student search (including a locker search) that is conducted by the police or other law enforcement officials (e.g., school security guards who have certain police powers), or one that is conducted by school officials in conjunction with or at the behest of law enforcement officials, will be closely scrutinized by the courts. It is likely that such a search will be deemed reasonable only if it is conducted pursuant to a valid warrant under the strict legal standard of "probable cause", although in some limited circumstances (for example, pursuant to a valid arrest) police may conduct a search without a warrant.

(7) General Laws Chapter 71, Section 37H requires every school committee to file with the Commissioner of Education its rules or regulations pertaining to the conduct of teachers or students, before they can become effective. These rules must be published and made available without charge to students and other persons. Each school committee should review and, if necessary, revise its student conduct rules to conform to the Supreme Court's requirements with respect to student searches, as well as to reflect the school committee's policy on searches of lockers and desks. In order to be effective, under G.L. c.71, §37H, the revised student conduct rules must be filed with the Commissioner of Education, together with a certification by the school committee that copies of the rules are available in each school as required by the statute.

RES/kal



The Commonwealth of Massachusetts Department of Education

1385 Hancock Street, Quincy, Massachusetts 02169-5183

M E M O R A N D U M

January 9, 1989

TO: John Desses
Education Specialist,
Southeast Regional Center

FROM: Dianne Curran, Esq. *DC*
Legal Office

RE: School Attendance Policy

Rhoda Schneider has asked me to respond to the several questions you forwarded from an individual seeking clarification of the law pertaining to school attendance policies and academic sanctions for absenteeism. The questions are posed in the context of an effort to review present attendance policy. I have discussed your letter with George Perry, Director of the Office of Student Services, in preparing this response. The questions and their respective answers follow.

1. If students are truant (unexcused absences) from school, can they receive an academic penalty for their absence?
2. Can a school system/district establish a number of days required for attendance (including home tutoring) in order to receive credit (out of the 180 days)?
3. If a student cannot be penalized academically (a failing grade) for lack of adequate attendance, can credit be withheld although the student receives a passing grade?

I will answer questions one through three together as they involve the same analysis of the school's authority. (I have assumed for purposes of discussion that your concerns are directed at the lawfulness of a school committee policy which incorporates such provisions.)

No Massachusetts law prohibits a school committee from adopting a student discipline/attendance policy which incorporates the provisions referenced in questions one and two, nor am I aware of any court decisions in Massachusetts that have

considered such policies. If a policy containing academic penalties were adopted and challenged in court, the court would have to determine, first, whether the policy is within the school committee's statutory authority and second, whether as written and applied, it affords students due process of law. If a "special needs" or "handicapped" student challenged the policy, the court also might be obliged to inquire whether the policy, as written or applied, discriminated on the basis of such "special needs" or "handicap".

General Laws c. 71, §37 gives the school committee general charge of the public schools. This general authority allows the school committee to develop policy governing attendance and grades. It also allows the school committee to set reasonable rules or regulations for the conduct of students (or teachers) in the schools. General Laws c.71, §37H requires that such rules or regulations be published and provided to any person without cost upon request, and that they be filed with the Commissioner of Education (through his designee for this purpose, the Office of Student Services) before they can take effect.

As a general rule, courts are reluctant to review academic standards set by school officials. In some jurisdictions, courts have approved academic sanctions for violation of school policy. Other courts have struck down public school policies that reduced or denied a student's academic course credit or grade because of the student's failure to attend classes. The theory of the latter decisions is that reduction of a student's grade is unreasonable if it is not premised solely on conduct that affects the student's work or on the student having failed to complete classroom work which forms the basis of the grade.

In view of the lack of binding precedent in this area and the split of opinion in other jurisdictions, we cannot say with certainty how a Massachusetts court would rule if asked to decide the legality of imposing academic penalties for unexcused absences. However, since the Massachusetts General Laws give school committees broad discretion to set reasonable student discipline rules and to develop policies for attendance and grades, if a policy were carefully and reasonably crafted, it is our opinion that such a policy would probably survive a legal challenge, assuming it has been adopted, published and filed by the school committee in accordance with General Laws, c. 71, §37H and the policy does not penalize students for disability related absences as discussed below.

If the school committee adopts an attendance policy with academic penalties, it should take care to ensure that the policy as drafted and implemented complies with Section 504 of the Rehabilitation Act of 1973. Section 504 prohibits discrimination on the basis of handicap and requires a school district to make reasonable accommodations for a student's handicap. Thus, the

policy should provide reasonable accommodations for students who are absent because of a disability (for example, a temporary illness or a chronic health problem); there should be no penalties for disability-related absences and opportunities should be provided for students to make up work missed during such absences.

The policy also should be consistent with the provision contained in the Chapter 766 Regulations which requires "the principal (or his/her designee)" to consider referring a child for a special education evaluation if the child "has been absent without medical excuse more than fifteen school days in any quarter." (Chapter 766 Regulations §315.1(d)).

Even though a discipline/attendance policy with academic penalties may survive a legal challenge, it is the Department's position that such policies are educationally unsound because they are likely to contribute to students dropping out of school. We, therefore, advise school districts not to adopt such policies. (In fact, George Perry informs me that the adoption of such a policy could jeopardize a school district's eligibility for drop-out prevention funds.) Appropriate, educationally sound strategies for dealing with student attendance problems are available and have been adopted by school districts around the Commonwealth. I believe the Office of Student Services (and Regional student service specialists) can assist districts that would like to get further information about these alternative strategies.

4. If the state mandates that students be in attendance for 180 days, what is the minimum amount of time a student can be in attendance and still receive credit for a course?

General Laws c.76, §1 generally requires all school-age children (6-16) to attend school for the number of days set by the Board of Education. The Board requires school committees to schedule at least 180 school days per school year for all public schools under their supervision and control (with certain exceptions for kindergarten students and graduating seniors). No statute or regulation requires students to attend school for a specified period of time in order to receive academic credit (or a passing grade) for a course. Such a determination is within the discretion of the local school committee, subject to those limitations specified in the answer to questions 1 - 3.

5. Does the Department of Education differentiate in attendance days required for those students under the age of 16 and those over the age of 16? i.e., is an 18 year old student as "truant" as a 15 year old?

In setting the minimum number of days per school year, the Board does not distinguish between students under 16 and over 16. (The Board does allow for the early release of graduating seniors).

The compulsory attendance statute, c.76, §1 referenced above, generally requires students of compulsory attendance age (6 to 16) to attend school, with the proviso that "such attendance shall not be required of a child whose physical or mental condition is such as to render attendance inexpedient or impracticable subject to the provisions of [Chapter 766]." Chapter 76, §1 also provides that "cases of necessary absence for other causes not exceeding seven day sessions or fourteen half day sessions in any period of six months" may be excused. The statutory remedy for unexcused violations of the compulsory attendance law is a truancy proceeding and fine against the parents under General Laws c.76, §2 or filing of a care and protection petition under General Laws c.119, §24. A proceeding may be commenced only if the student has been absent without excuse for at least seven day sessions or fourteen half day sessions within a six month period.

An 18 year old who is absent from school without an excuse is not "truant" within the meaning of the law, because attendance is not compulsory for his/her age group. Obviously, the same would be true for any student sixteen or over. This does not preclude the school committee from imposing other disciplinary or academic sanctions for unexcused absences.

6. What kind of penalty can a school system impose on a student due to the significant lack of attendance of the student?

Various disciplinary and academic sanctions may be permissible and George Perry or others in the Office of Student Services may have specific suggestions based on effective practices in Massachusetts school districts. In addition, if the student is of compulsory attendance age, the school district may take steps to initiate a truancy proceeding as explained above. Each school committee is required by General Laws c.76, §19 to employ one or more supervisor(s) of attendance who has (have) authority to file a complaint in juvenile court against an absent student's parent(s).

I hope this information is useful. If you have any further questions, feel free to contact me.

